UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATOSHA DUNSTON, individually,

Case No. ________________

Plaintiff,

v.

PLACITA OXAQUENA CORP d/b/a LA PLACITA OXAQUENA, a New York for profit corporation, and **EVALIDIA NANDO**, an individual,

Defendants.

____

COMPLAINT FOR VIOLATIONS OF ADA

Plaintiff, NATOSHA DUNSTON, by and through the undersigned counsel, and in accordance with the Federal Rules of Civil Procedure and all other applicable statutes, rules, governing legal authorities, and advisory opinions files the instant Complaint against Defendants PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA and EVALIDIA NANDO for violations of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*.

I. Jurisdiction

1. This Court has original jurisdiction over claims arising under Title III of the Americans with Disabilities Act (hereinafter "ADA"). *See* 42 U.S.C. § 12181 *et seq.*; 28 U.S.C. §§ 2201-2202) pursuant to 28 U.S.C. §§ 1331 and 1343.

2. Plaintiff NATOSHA DUNSTON is an individual with a disability as defined by the ADA.

3. Plaintiff NATOSHA DUNSTON is seeking injunctive relief pursuant to the ADA.

4. Plaintiff NATOSHA DUNSTON is also seeking to recover attorneys' fees, litigation expenses and costs incurred in pursuing an action to enforce and obtain compliance with provisions of the ADA in accordance with 28 U.S.C. § 12181 *et seq.*

5. The violative property is located in Kings County, New York at 110 Nassau Avenue, Brooklyn 11222 (hereinafter "Property").

6. Defendant EVALIDIA NANDO is the record owner/landlord of the Property.

7. The Property is being operated as a food service establishment thus qualifying as a "place of public accommodation (*see* 28 CFR 36.201(a))."

8. Defendant PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA is the tenant on the Property operating this food service establishment.

9. Venue properly lies in the Eastern District of New York, which is the federal judicial district in which the property is located and on which the violative establishment is conducting business.

II. ADA Ensures Reasonable Access For Individuals with Disabilities

10. Notice prior to initiating suit is not mandated by the ADA.

11. All conditions precedent to filing suit are satisfied or are waived by Defendant as their violations have been ongoing since implementation of the ADA.

12. The ADA prohibits discrimination on the basis of disability. The Act guarantees reasonable accommodations for individuals with disabilities to ensure they are not the subject of discrimination.

13. The ADA and the ADA/ABA Accessibility Guidelines for Buildings and Facilities (36 CFR Part 1191, Appendices B and C) along with 28 CFR Part 36, Subpart D, the New Construction and Alterations portion of Title III (all hereinafter referred to as the "Accessibility Standards") dictate that property owners and operators of "commercial establishments" are jointly responsible complying with these federal Accessibility Standards.

III. Defendant's Violations of ADA Accessibility Standards:

14. Defendants have and are continuing to violate the Accessibility Standards by failing to provide accessible facilities since the act was enacted as law.

15. These violations infringe upon Plaintiff's right to travel free of discrimination causing Plaintiff harm in the form of suffering frustration, shame and humiliation.

16. When Plaintiff DUNSTON was visiting PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA on Defendant EVALIDIA NANDO's Property she encountered architectural barriers at the Property precluding his from reasonably accessing the goods and services provided to non-disabled individuals.

17. These barriers to access at the Property have deterred Plaintiff from availing herself of, and are denying her the opportunity to participate and benefit from the goods, services, privileges, advantages, facilities and accommodations at PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA equal to those afforded to other individuals.

18. Defendant, therefore, is discriminating against Plaintiff and other similarly situated disabled individuals.

19. As a result of Defendant's ADA non-compliance, Plaintiff DUNSTON is being deprived of the meaningful choice of freely visiting the same accommodations readily available to the general public.

20. Consequently, Plaintiff is effectively deterred and discouraged from further travel due to these ADA problems.

IV. Plaintiff DUNSTON Qualifies As An Individual with a Disability Under the ADA

21. Plaintiff DUNSTON has three children and she is currently attending classes to obtain her G.E.D to become a high school graduate. All of her family reside throughout New York.

22. Plaintiff DUNSTON commutes principally using Access-a-Ride although she also used the MTA/New York City Transit Bus System or other special transportation services.

23. Plaintiff DUNSTON is a forty-seven (47) year old woman who presently resides in Brooklyn, New York.

24. In September of 2015, Plaintiff DUNSTON had a hysterectomy.

25. As a result of complications during the procedure, including adverse reactions to medications being administered, blood clots began forming throughout Plaintiff DUNSTON's left leg.

26. Plaintiff DINSTON's left leg had to be amputated less than one month later that same year.

27. Plaintiff DUNSTON has been and is not permanently confined to a wheelchair since having her left leg amputated.

IV. Inspection of PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA Establishes ADA Non-compliance

28. The present violations at Defendants' facility threaten Plaintiff's safety.

29. An inspection of PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA reveals the following architectural barriers to access precluding Plaintiff, as an individual who is confined to a wheelchair, from reason able accessing the goods and services offered to able-bodied persons:

    a) inaccessible entrance as existing step at travel path leading to entrance acts as a barrier to accessibility without required ramp;

    b) required minimum maneuvering clearance not provided at entrance door;

    c) non-compliant change in floor level within required maneuvering clearance at entrance door;

d) inaccessible service counter as existing height of service counter exceeds maximum height allowance;

e) portion of service counter required to be accessible not provided;

f) inaccessible dining tables as required minimum knee and toe clearance not provided at dining tables;

g) minimum percentage of existing dining tables required to be accessible not provided;

h) inaccessible restroom as required minimum clear width not provided at travel path leading to restroom;

i) inaccessible travel path leading to restroom as travel path leading to restroom requires passage thru service kitchen area;

j) rise in floor level at threshold of restroom door acts as a barrier to accessibility without required ramp not provided for rise in floor level at threshold of restroom door;

k) required minimum clear width not provided at opening of restroom door;

l) required minimum maneuvering clearance not provided at restroom door;

m) non-compliant door knob at restroom door requires twisting of the wrist;

n) required minimum turning space not provided in restroom;

o) inaccessible light switch in restroom as mounted height of light switch exceeds maximum height allowance;

p) inaccessible water closet in restroom as required minimum clear floor space not provided at water closet;

q) required grab bars not provided at rear and side walls of water closet;

r) non-compliant distance of water closet from side wall;

s) inaccessible lavatory in restroom as required minimum clear floor space not provided at lavatory;

t) required minimum knee and toe clearance not provided at lavatory;

u) insulation of pipes and water lines under lavatory not provided as required;

v) inaccessible paper towel dispenser in restroom as mounted height of paper towel dispenser exceeds maximum height allowance;

w) failure to maintain accessible features and failing to adhere to policies, practices and procedures to ensure that the goods and services being offered, as well as the facilities themselves, are accessible to people with disabilities;

30. The above-listed discriminatory violations are not an exhaustive list of all ADA violations on the property. Plaintiff requires an inspection of Defendants' place of public accommodation in order to identify, photograph and measure all of the barriers to access that constitute discriminatory acts in violation of the ADA.

V. Returning to LA PLACITA OAXAQUENA Before All Violations Are Remedied May Threaten Plaintiff DUNSTON's Physical Safety

31. As the violations at Defendants' facility are ongoing, it would be a futile gesture for Plaintiff to return to the property so long as the above listed violations exist.

32. Plaintiff returning to the property prior to all above violations being remedied will only further subject Plaintiff to discrimination and threaten Plaintiff's physical safety and well-being.

33. Plaintiff plans on returning to PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA to avail herself of the good and services offered to the public thereon, and to determine whether the property has been made ADA compliant.

34. However, Plaintiff may require assistance from an able-bodied individual upon returning to ensure his physical safety is not needlessly threated by Defendant's ongoing non-compliance.

VI. CLAIMS

A. Declaration of ADA Violations by Defendant PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA

35. When Plaintiff DUNSTON visited PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA she could not reasonably access the goods and services otherwise available to able bodied individuals due to architectural barriers and other ADA violations (*see* 42 USC § 12181 *et seq.* and 28 CFR 36.302 *et seq.*) set forth herein in paragraph 29.

36. The Accessibility Standards, in particular Title III of the ADA, require all places of public accommodation to provide any person with a disability equal access to the goods and services being offered to non-disabled individuals.

37. Defendants denied Plaintiff reasonable access to the good and/or services being offered on their premises in violation of Title III of the ADA thus causing Plaintiff to retain the undersigned law firm to enforce her rights.

38. As a result of Defendants being in continuous violation of Title III of the ADA Plaintiff DUNSTON has and is suffering actual harm in the form of personal injury, and humiliation including a sense of isolation and segregation, all of which are depriving Plaintiff of the full, fair and equal enjoyment of the goods, services, facilities, privileges and/or accommodations available to the general public.

39. A declaration that Defendants were in violation of the ADA at the time Plaintiff suffered real and actual harm is necessary to ensure Plaintiff is compensated for the attorneys' fees expended to obtain Defendants compliance with the law.

40. The undersigned has been retained by Plaintiff to pursue Plaintiff's rights as an individual suffering with a "disability" as defined by the ADA. Plaintiff is entitled to recover fair and reasonable attorneys' fees, costs and litigation expenses from the Defendants pursuant to 42 U.S.C. § 12205 and 28 CFR 36.505.

WHEREFORE, Plaintiff respectfully requests an order declaring Defendants (A) in violation of Title III of the ADA, 42 USC § 12181 *et seq.* at the time of Plaintiff's visit*;* and ((B) as a result of architectural barriers Defendants have effectively denied Plaintiff, as an individual with a disability, reasonable access to the goods and/or services offered on the Property thereby discriminating against Plaintiff.

B. ADA Violations Requiring Injunctive Relief

41. Plaintiff reasserts and incorporates the allegations set forth in paragraphs 1 through 34 above as if set forth specifically herein.

42. PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA is being operated as a place of public accommodation in violation of ADA.

43. Plaintiff, and all other individuals similarly situated, have been denied access to and have been denied the benefits of services, programs and activities at the Defendant's establishment as a result of the ADA violations set forth herein in paragraph 29 in violation of 42 USC § 12181 *et seq.* and 28 CFR 36.302 *et seq.*.

44. Defendant continues to discriminate against Plaintiff and those similarly situated by operating PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA and yet failing to make reasonable modifications in policies, practices and/or procedures to comply with the Accessibility Standards.

45. Modifications in Defendant PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA's practices, policies and procedures are necessary to afford all offered goods, services, facilities, privileges, advantages and/or accommodations to individuals with disabilities.

46. Said modification are also necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals.

47. Plaintiff is suffering true and actual harm by Defendant PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA operating a place of public accommodation. Defendant's discriminatory practices create the potential for and/or cause Plaintiff physical harm and contribute to Plaintiff's sense of isolation and segregation thereby depriving Plaintiff of the full, fair and equal enjoyment of the goods, services, facilities, privileges and/or accommodations available to the general public.

48. Plaintiff, and all others similarly situated, have and will continue to suffer irreparable injury and damage without the immediate relief provided by the ADA and requested herein.

49. Plaintiff is without any adequate remedy and law.

50. The undersigned has been retained by Plaintiff and Plaintiff is entitled to recover fair and reasonable attorneys' fees, costs and litigation expenses from the Defendant pursuant to 42 U.S.C. § 12205 and 28 CFR 36.505 for having to employ the services of an attorney to gain Defendant's compliance with the Accessibility Standards.

51. Pursuant to 42 USC § 12188, this Court is empowered to order an injunction to remedy for Defendant's ADA violations, including but not limited to issuing an order requiring Defendant to alter the subject property so as to make the facilities readily accessible and

usable by Plaintiff and other persons with disabilities as defined by the ADA or by closing the facility until such time as Defendant cure all ADA violations.

WHEREFORE, Plaintiff prays for and respectfully requests the Court order the following relief:

a. Injunctive relief against Defendant;

b. award reasonable attorneys' fees, costs and litigation expenses in accordance with 42 USC § 12205;

c. any other relief this Court deems just and proper and/or is otherwise allowable under Title II of the ADA.

c. Liability of Property Owner for ADA Violations on Property

52. Plaintiff reasserts and incorporates the allegations set forth in paragraphs 1 through 34 above as if set forth specifically herein.

53. Defendant EVALIDIA NANDO is the documented owner of the Property on which Defendant PLACITA OXAQUENA CORP D/B/A LA PLACITA OXAQUENA is operating a place of public accommodation violating the Accessibility Standards by permitting discriminatory treatment of persons confined to wheelchairs.

54. Individuals confined to wheelchairs, including Plaintiff DUNSTON have been denied access to and the benefits of services, programs and activities at the Defendant EVALIDIA NANDO's Property as a result of the ADA violations set forth herein in paragraph 29. *See* 42 USC § 12181 *et seq.* and 28 CFR 36.302 *et seq.*

55. Defendant is continuing to discriminate against Plaintiff by failing to make reasonable modifications in the physical structure so as to permit compliance with Title III of the ADA.

56. The structural impediments set forth in paragraph 29 must be remedied to eliminate the architectural barriers set forth herein, which remedies are necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals.

57. Permitting a place of public accommodation to operate in violation of the ADA is causing Plaintiff to suffer true and actual harm. The architectural barriers create the potential for and/or cause Plaintiff physical harm and the contribute to Plaintiff's sense of isolation and segregation thereby depriving Plaintiff of the full, fair and equal enjoyment of the goods, services, facilities, privileges and/or accommodations available to the general public.

58. Plaintiff has and will continue to suffer irreparable injury and damage without the immediate relief provided by the ADA and requested herein.

59. Plaintiff is without any adequate remedy and law.

60. The undersigned has been retained by Plaintiff and Plaintiff is entitled to recover fair and reasonable attorneys' fees, costs and litigation expenses from the Defendants pursuant to 42 U.S.C. § 12205 and 28 CFR 36.505 for having to employ the services of an attorney to gain Defendant's compliance with the Accessibility Standards.

61. Pursuant to 42 USC § 12188, this Court is empowered to order an injunction to remedy for Defendant's ADA violations, including but not limited to issuing an order requiring Defendant to alter the subject property so as to make the facilities readily accessible and usable by Plaintiff and other persons with disabilities as defined by the ADA or by closing the facility until such time as Defendants cure all ADA violations.

WHEREFORE, Plaintiff prays for and respectfully requests the Court order the following relief:

d. Injunctive relief against Defendant;

e. award reasonable attorneys' fees, costs and litigation expenses in accordance with 42 USC § 12205;

f. any other relief this Court deems just and proper and/or is otherwise allowable under Title II of the ADA.

Respectfully submitted on May 10, 2017.

By:_/s/ Tara Demetriades
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